

No. CV 03-08023-AHM (RZx)

I, TERRY N. BUROKER, hereby declare and say:

1. I served as the Information Review Officer (IRO) for the Directorate of Intelligence (DI) of the Central Intelligence Agency (CIA) from April 2004 until January 2006. I have served in the CIA for over 30 years, and continue to hold a senior assignment in the information review and release field, where I act on behalf of the DI.

2. My official responsibilities and authorities as IRO are described in paragraphs 1-3 of my first declaration filed in this case dated June 20, 2005, which I hereby incorporate by reference. Also incorporated by reference herein are my second declaration filed in this case dated August 5, 2005 and the declaration of Scott A. Koch of October 1, 2005, also filed in this case.

3. I make this declaration in support of Defendants' Motion for Summary Judgment as to the CIA. The purpose of this declaration is to supplement the CIA's earlier submissions and, in so doing, address the final seven CIA documents¹ which were identified as responsive to Plaintiff's FOIA request. These documents have been in coordination

¹ As stated in the Koch Declaration, "there are seven records in coordination or the subject of consultation with other agencies," ¶ 23. One of these records was subsequently referred to the National Security Agency (NSA) for review and direct response to the Plaintiff and will be addressed in a declaration submitted by that agency. See ¶ 7. In addition, this declaration addresses seven documents, previously referred to the NTSB for review and direct response to the requester, which were subsequently returned to CIA as "Not NTSB" documents. Six of these documents are released in full, and one is released in part (see MORI Doc ID 1305302 in document description index).

with other federal agencies.² With the declarations referred to in paragraph 2 above, this declaration completes CIA's response to Plaintiff's FOIA request. I make the following statements based upon my personal knowledge and upon information made available to me in my official capacity.

4. As indicated in note 5 of my June 20, 2005, declaration, CIA's analytic effort was limited in scope. At the request of the FBI, the focus of the CIA inquiry on TWA Flight 800 was to determine what the eyewitnesses saw, not what happened to the aircraft.

5. Relying principally on materials furnished by the FBI, including "eyewitness reports, radar tracking data and certain NTSB observations regarding the cockpit voice recorder and flight

² A "coordination" occurs when a document contains information from another agency and the CIA contacts the other agency to obtain guidance on whether to release or withhold any of that agency's information. A "referral" occurs when the CIA possesses record(s) that are responsive to a FOIA request but that originated with another agency. In such a case the CIA refers the record(s) to the originating agency for it to review and respond directly to the requester.

data recorder," CIA analysts concluded that the eyewitnesses did not see a missile. The eyewitness sightings of greatest concern--the ones that originally raised the possibility of a missile--took place after the aircraft exploded. CIA analysts concluded that what these eyewitnesses saw was the Boeing 747 in various stages of crippled flight. The CIA reported this finding to the FBI and, for visualization purposes, incorporated it into a video, which was shown to the public by the FBI on November 18, 1997.

6. As explained above and in earlier CIA declarations, certain of the records responsive to the Plaintiff's October 3, 2003, request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, are records created by federal agencies other than the CIA. The CIA referred these records to the originating agencies for their review and direct response to Plaintiff. Much of the underlying information was provided to CIA by the FBI, but was

not originated by the FBI. As a result, multiple and serial coordinations or referrals to other agencies were required.

7. One record located by the CIA was referred to the National Security Agency (NSA) for its review and direct response to the requester. This "record" was responsive to that portion of the request which sought "computer simulation ...programs used by the CIA and/or NTSB" (item 83). After consulting with NSA on the most efficient way to effect the transfer, the CIA referred the record to NSA by identifying the record and referring NSA to item 83 of Mr. Lahr's request. As stated in the Declaration of Louis F. Giles filed in this case, by letter dated November 7, 2005, the NSA informed Plaintiff that it had determined that the record "was exempt from disclosure pursuant to Exemptions 2 and 3 of the FOIA."

8. With respect to CIA records, the CIA

responded to Plaintiff's FOIA request by releasing some records in full, denying some in part, and denying some in full. The CIA based its denials on FOIA Exemptions (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7)(C). (See the first and second Buroker Delarations filed in this case.) Attached hereto as Exhibit A is a true and correct copy of five records released in part to the Plaintiff by letter dated 20 October 2005 (MORI 1255552-1255556), and one record (MORI 1305302) released in part by letter dated 31 March 2006 (Exhibit B). Also, attached hereto as Exhibit C, are the respective document index descriptions for these documents and one document that is denied in full.

9. With respect to the attached documents, the CIA has withheld an intelligence method from two documents (MORI Doc. 125554 and 125556) and the names of CIA personnel from five documents (MORI Doc. 1255551, 125553, 125554, 125555 and 125556) pursuant to FOIA Exemption (b)(3). See Buroker

Decl., June 20, 2005, ¶¶ 26-32. The names of FBI special agents and/or eyewitnesses have been withheld from three documents (MORI Doc. 1255552, 1255554 and 125555) at the request of the FBI, pursuant to Exemptions (b)(6) and (b)(7)(C). See *id.* at ¶¶ 43-47 and ¶¶ 48-52.


10. Certain information in two documents (MORI Doc. 1255554 and 1305302) has been withheld under FOIA Exemption 4, which exempts from disclosure "trade secrets and commercial or financial information" that would customarily not be released to the public by the person who provided it. The withheld information relates to the flight characteristics and performance of a Boeing 747, for example, lift coefficient, drag coefficient and pitching moment coefficient data. See *id.* ¶¶ 33-36, and the Declaration of Richard S. Breuhaus, attached thereto as Exhibit 5, which describes the proprietary nature of this

information. The information was voluntarily provided to CIA and NTSB by the Boeing Corporation.

11. The CIA has withheld one record (MORI Doc. 1255551) pursuant to FOIA Exemption (b)(5) and the deliberative process privilege. This record is a draft letter written by a CIA analyst for the consideration and signature of his office management. Unsigned and undated (drafted in March 1998), this document contains subjective evaluation and individual judgments regarding preliminary analysis of newly acquired data. Thus, this document is both predecisional and deliberative. See Second Buroker Decl., August 15, 2005, ¶ 6.

I hereby declare under penalty of perjury that
the foregoing is true and correct.

Executed this 31st day of March 2006.



Terry N. Buroker
Central Intelligence Agency